

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM RALPH WILSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

)
) Civ. No. 14-0318GT
) Cr. No. 91-0723GT

) **ORDER**
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On February 10, 2014, Petitioner, William Ralph Wilson ("Mr. Wilson"), filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 ("Motion"). However, Mr. Wilson expressly states that his Motion does not seek relief, but is rather an attempt to preserve his alleged right to seek relief under Alleyne v. United States, 133 S.Ct. 2151 (2013). For the reasons stated below, Mr. Wilson's Motion is **DENIED**.

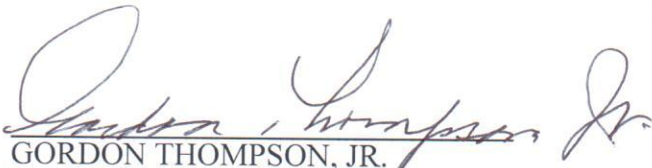
On June 17, 2013, the Supreme Court decided the Alleyne case. This case held that any fact which increases the mandatory minimum sentence for a crime is an element of the crime and not a sentencing factor. As an element, it must be submitted to a jury and proven beyond a reasonable doubt. The Alleyne case overruled Harris v. United States, 536 U.S. 545 (2002).

1 Without more, Mr. Wilson, who was tried, convicted and sentenced in 1992, simply states
2 that the indictment in his case was deficient because it did not state all the required elements and
3 those elements were not proven beyond a reasonable doubt as required under Alleyne. He further
4 states that his current Motion is “not an attempt to circumvent” the requirement of a certificate of
5 appealability for a second or successive §2255 Motion. He states that his present Motion is simply
6 “intended to preserve the Alleyne” claim. However, under Dodd v. United States, 125 S.Ct. 2478
7 (2005), a second or successive §2255 motion will be time barred unless, in the rare case, the
8 Supreme Court announces the new constitutional rule and makes it retroactive within one year. In
9 this case, the Alleyne case was not made retroactive within one year. Hence, if Mr. Wilson filed
10 a second § 2255 motion based on the Alleyne case, it would time barred. Accordingly,

11 **IT IS ORDERED** that Mr. Wilson’s Motion is **DENIED**.

12 **IT IS SO ORDERED.**

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15 5/21/15
16 date

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GORDON THOMPSON, JR.
United States District Judge

cc: All parties